Dissertation

On

RIGHTS OF ELDERS: A CASE FOR CRIMINALIZATION OF ELDER ABUSE IN INDIA

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Submitted by:

SARVESTA GYANENDRA

Enrollment Number: 2322215005014

Registration Number: 230050140113

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Under the Guidance of

MS. SOUMIKA AICH ROY

(Assistant Professor, School of Law)

Sister Nivedita University

Department of Law

Sister Nivedita University

2025

Sister Nivedita University

DG Block, 1/2 (New Town), Action Area 1, Kolkata – 7000156

Phone: +91-7595044470, 75950444709, 8306531112

Official Website: https://snuniv.ac.in

Email: info@snuniv.ac.in

CERTIFICATE

This is to certify that the Dissertation titled "**Rights of Elders: A Case for Criminalization of Elder Abuse in India**", has been submitted by **Sarvesta Gyanendra**, bearing Enrollment ID No: 2322215005014, Registration No: 230050140113 for partial fulfilments of the Degree of Master of Laws (LL.M.) from Sister Nivedita University under my guidance. It is her original work and may be placed before the examiners for evaluation.

This research work has not been submitted for the award of any other degree of this University or of any other University.

Date: 25-04-2025

Place: Kolkata

MS. SOUMIKA AICH ROY

Assistant Professor – School of Law

(SNU)

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I hereby declare that the work which is being presented in this dissertation entitled "**Rights of Elders: A Case for Criminalization of Elder Abuse in India**" in partial fulfilment of the requirements for the award of the degree of Masters of law in Criminal Law is an authentic record of my own work carried out during the period from 2023 to 2025 under the supervision of Ms. Soumika Aich Roy, Department of Law, SNU Kolkata.

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Sarvesta Gyanendra 25-04-2025

Name of the Student: **SARVESTA GYANENDRA**

Registration no: 230050140113

Department: Law

PREFACE

Elder abuse is now a growing problem in Indian society. As the older adult population increases, so do the incidences of neglect, emotional abuse, physical abuse, financial abuse, and other forms of mistreatment. Although there are cultural values that historically emphasize respect for the elder person, a significant number of elderly people are still experiencing abuse, mostly from close family members and caregivers. Elder abuse violates fundamental human rights, as well as impacts the moral and social structure of society.

Elder abuse has many aspects, including legal, social, economic, and psychological. India has laws that do provide some protections for elder persons, such as the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, however due to a lack of a clear, comprehensive legal framework that criminalizes elder abuse, victims are still unable to receive justice or have access to adequate remedies. The various provisions are fragmented causing unclear ways of implementation and limited enforcement.

The coming into force of the Bharatiya Nyaya Sanhita, 2023 and the changing from colonial-era laws gives rise to another opportunity to address the shortcomings in the existing law. The existing law can benefit from a more structured and punitive response to elder abuse that reflects the magnitude of the problem and allows for effective redress.

This study aims to examine the existing legal framework which deals with elder abuse in India and to investigate how existing laws deal or not deal with the reality of the experiences of the elderly with abuse. The study will also address the need to criminalize elder abuse, propose improvements and recommend a more coherent, integrated mechanism derived from international best practices across the legal landscape that suits the socio-legal context of contemporary India

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List of Abbreviations

BNS: Bharatiya Nyaya Sanhita

BNSS: Bharatiya Nagarik Suraksha Sanhita

BPL: Below Poverty Line

CrPC: Code of Criminal Procedure

DPSP: Directive Principles of State Policy

HC: High Court

IPSrC: Integrated Programme for Senior Citizens

JJA: Juvenile Justice (Care and Protection of Children) Act

MWPSC: Maintenance and Welfare of Parents and Senior Citizens Act

NDMA: National Disaster Management Authority

NGO: Non-Governmental Organization

NHRC: National Human Rights Commission

NPHCE: National Programme for Health Care of the Elderly

NPOP: National Policy on Older Persons

POCSO: Protection of Children from Sexual Offences

POSH: Protection of Women from Sexual Harassment

PWDV Act: Protection of Women from Domestic Violence Act

RVY: Rashtriya Vayoshri Yojana

SCC: Supreme Court Cases

SC: Supreme Court

SPARSH: Scheme of Prevention of Abuse and Restoration of Security and Health of Senior Citizens

UDHR: Universal Declaration of Human Rights

UN: United Nations

WHO: World Health Organization

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CHAPTER 1

1.1. Introduction

In recent years the rise in crimes against vulnerable sections of society has led to demands for legal reforms and systemic accountability. One such issue that is getting insufficient attention whether it is legally or socially is elder abuse. As the global and national population of elder persons is increasing, the need to protect their rights and dignity becomes even more important. Elder abuse though happening in private and hidden spaces, it is a gross violation of human rights and a growing public concern.

Defined broadly, elder abuse refers to an act or repeated acts or omission of a necessary action by a person who is trusted by an elder person, resulting in harm or distress of the said older individual[1] Elder abuse can morph into various different types of abuse be it physical harm, psychological torture, financial exploitation, neglect and/or sexual abuse of elder persons. The WHO estimates that 1 in 6 people aged 60 and above experience some type of abuse every year.[2]

The term "elder abuse" was first formally recognized in scientific and policy literature in the United Kingdom in the 1970s, when incidents of abuse in institutional settings came to public attention.[3] Since then global academic and policy frameworks have acknowledged the issue. However, much ambiguity still surrounds its legal definition and scope in many countries such as that of India.

Though omnipresent, elder abuse continues to be under-reported and vastly misunderstood as it is generally brushed off as a domestic/private issue. In India, both culturally and traditionally, family has always been a caretaker and provider for older individuals of the family. However, due to the fast-paced urbanization, diminishing joint-family system, out migration of youth and economic compulsions results in the suffering of the elderly, often from isolation without support and are at risk of exploitation usually by those who are meant to take care of them.

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[1] *WHO, Elder Abuse, https://www.who.int/ (last visited Apr. 17, 2025)*
[2] *Id.*
[3] *The Mistreatment of Elderly People (SAGE Publications 1993)*

India has put in place certain laws to support elder persons, such as the MWPSC Act, 2007. However, this law mostly focuses on handling issues through civil actions and does not criminalize elder abuse all together.[4] There are other general criminal laws, like the BNS Act, 2023, which cover crimes such as physical assaults, making threats, or betraying someone's trust. Again, these existing laws still do not cover all details and types of elder abuse. These laws often leave out important aspects like the psychological harm and emotional suffering that older individuals might experience. This issue means that India's legal system does not properly handle all forms of elder abuse. As a result, many older individuals do not receive the necessary protection.

Many countries have made specific laws to clearly explain and address elder abuse. In the United States, Canada, and Australia, there are special laws known as elder justice acts. These laws are designed to protect older people. They focus on preventing elder abuse from occurring and ensuring that individuals who commit such acts are appropriately punished.[5] These laws often mandate reporting by professionals, impose stricter penalties, and ensure access to support services for elderly victims.

In India, elder abuse is not specifically defined, nor is it recognized as a distinct crime in the current laws. This leads to elder abuse often being ignored by society and slipping through the system of justice. Without specific legal guidelines, people generally have less awareness about elder abuse. Cultural taboos also make it hard for victims to talk openly about what they go through. As a result, victims face significant challenges in obtaining the justice and acknowledgment they need.

This dissertation explores how the laws in India deal with elder abuse, with a main focus on why elder abuse should be considered a separate crime. It examines how the current laws work, points out where they fall short, and learns from the best examples from other countries. The study proposes that India should adopt a stronger and more detailed legal approach to better protect elderly people under its criminal law system.

[4] *MWPSC Act, No. 56 of 2007, § 4, Acts of Parliament, 2007 (India)*
[5] *Elder Justice Act of 2009, 42 U.S.C. §§ 1397–1397f (United States)*

1.2. Statement of the Problem

Elder abuse is increasingly common in India. This involves various forms of mistreatment of older people, such as emotional and financial exploitation. Unfortunately, some elders are also experiencing physical harm. The country's legal system is currently not addressing these issues effectively. Important laws, like the MWPSC Act, 2007, and the BNS, 2023, do not clearly define elder abuse as a separate crime. These laws lack specific rules to safeguard older individuals who are particularly vulnerable. As a result, many elderly victims do not receive the necessary protection or assistance they deserve.

In India, there is no specific law to protect elder persons from abuse, indicating that society has not fully acknowledged the importance and rights of elders. There are no mandatory rules to report such abuse against older individuals, institutional support is limited, and the legal recognition of this issue is insufficient. As a result, elder abuse often remains hidden and unaddressed. This neglect denies justice to victims and fosters a culture of silence about elder mistreatment within both families and society.

1.3. Research Objectives

1 To critically assess the adequacy of India's existing legal framework in addressing and safeguarding elder persons from various types of elder abuse.

2. To analyse legal models of international best practices on elder abuse, and explore how these frameworks can be adopted by Indian legal framework.

3. To assess the need for the criminalization of elder abuse in India and evaluate whether such criminalization should be implemented through a standalone legislation or by amending existing legal frameworks.

1.4. Research Questions:

1. Does the current Indian legal framework provide adequate criminal provisions for different forms of elder abuse (physical, financial, emotional, and neglect)?

2. What lessons can India draw from international legal frameworks and enforcement mechanisms for elder abuse, and how can these best practices be adapted to India's context?

3. Should elder abuse be explicitly criminalized in India?

1.5. Hypothesis

Current Indian laws are not properly equipped to punish offenders who harm or mistreat elder persons. Resulting in older individuals not getting enough legal protection and support. It is important to implement specific laws that criminalizes elder abuse while taking guidance from the best practices around the world. Doing so, will help protect the rights and dignity of elder persons in India.

1.6. Research Methodology:

This study adopts a doctrinal legal approach and focuses on examining both primary and secondary sources of legal data. It analyses relevant constitutional provisions and statutory laws in India, such as the MWPSC Act, 2007 and the BNS, 2023. The research also reviews relevant case laws, governmental policies, welfare schemes for the elderly, and scholarly articles. By identifying where the current Indian legal system falls short, this study aims to suggest improvements to better protect elders from abuse and argue for criminalization of elder abuse in India. Additionally, it examines statutes and legal frameworks from international jurisprudence to identify best practices that can be adapted to the Indian context for the effective criminalization of elder abuse.

1.7. Literature Review

The study "Effectiveness of Legal Frameworks in Addressing Elder Abuse: A Case Study of the MWPSC Act, 2007" by Bano and Trivedi (2024)[6] examines India's laws for protecting older adults. It focuses on the MWPSC Act. The authors discuss how the Act provides rules for the care and support of senior citizens. The current approach doesn't fully address all kinds of elder abuse, like emotional or physical harm. It's noted that although there are some legal

[6] *Bano, S., and Trivedi, P. K. (2024). Effectiveness of legal frameworks in addressing elder abuse: A case study of the MWPSC Act, 2007. IJLLR Journal, 6(1).*

solutions provided, elder abuse isn't recognized as a distinct legal issue. Moreover, there aren't any tough penalties for offenders. The recommendation is to establish a more robust legal framework that not only provides support but also classifies elder abuse as a criminal act.

The paper "Understanding Elder Abuse in India: Contributing Factors and Policy Suggestions" by Chattopadhyay et al. (2022)[7] gives an in-depth discussion of elder abuse in India. It looks into the problem's scope, causes, and attempts to explain why it is often not addressed. LASI data highlights some of the major predictors of elder abuse which include gender, health, and marital status. These factors increase the risk for an older person being abused. While sustaining such abuse could imply a financial strain, the other factors that cause the suffering of the elderly, go beyond monetary, inclusive of emotional and physical realms. The social researcher also covered existing gaps within current policy frameworks aimed toward elderly persons such as enhancing public educational campaigns and reinforcing social services.

The study "Contextualizing Elder Abuse and Neglect in Institutional and Home Settings: Case Studies from India" by Jahangir et al., 2018[8] assessed elderly abuse in India. The study conducted deep interviews with 116 participants in Delhi, Kolkata and Kerala to gather information on the elder abuse phenomenon. The findings showed that mental abuse and verbal abuse are major problems. The consequences of rapid urban migration and decline of joint families coupled with shifts in inter-generational relations big impacts on the safety of elder adults. Nurses and aides working in long-term care facilities are often in positions where they can neglect and disrespect elders that will go unnoticed and these are systemic problems caused by inadequate training of the caretakers. The study mentions that many elder abuse victims do not report the abuse due to internalized stigma and cultural norms that dictate protecting family reputation which results in shame for speaking up. The authors stress the need for policy change and increased public discourse in addition to developing frameworks to serve for the security and welfare of the elders in India.

The chapter "Family Violence: Reflections on Elder Abuse in India" by Anupama Datta (2018)[9] discusses in depth elder mistreatment in the family context in India. It specifically

[7] *Maurya, P., Chattopadhyay, A., Rao, S. et al. Understanding Elder Abuse in India: Contributing Factors and Policy Suggestions. Population Ageing 17, 5–32 (2024).*
[8] *I. Jahangir, S. Bharati & S. Parveen*, *Contextualizing Elder Abuse and Neglect in Institutional and Home Settings: Case Studies from India*, *32 Indian J. Gerontology 447 (2018)*
[9] *Anupama Datta, Family Violence: Reflections on Elder Abuse in India, in Abuse and Neglect of the Elderly in India 43, 43–58*

examines family violence against elderly people with chronic illness utilizing data collected by HelpAge India from several cities between 2012 and 2014. The disrespect, neglect, and verbal abuse are problems of many older people included in this study. Sadly, some of the mistreatment comes from family members, particularly sons and daughters-in-law. One of the most troubling findings of this research is that many elderly victims do not report the abuse. Most elderly patients do not report the abuse for the most part because they want to guard the reputation of the family or because they do not know what assistance is available to them. The chapter shows the necessity of intergenerational relations, the cultivation of caring attitude among younger adults, greater financial autonomy for the elderly, and the nurturing of seniors in the prevention of elder abuse. Moreover, it advocates for more effective laws and simple legislation dealing with the reporting of abuse aimed at elderly people in India.

The study "Legal Framework for the Aged: Progress and Pitfalls in India's Elderly Welfare Policies" by Sanjoli Nagpal[10] analyses MWPSC Act of 2007 along with its amendments in 2019. It highlights that the protection offered to elders under the law is inadequate since it pertains to a largely non-offense based socio-legal model. Its lack of penal provisions incapacitates its deterrent effect on elder abuse. Nagpal contends that elder abuse is a crime that needs to be recognized legally in India. The article also points out problems in how the law is put into practice and notes that it doesn't cover all necessary areas. There is a strong call for better, clearer laws to protect the rights and dignity of older people more effectively.

The article “Elder Abuse and Elder Victimization: A Sociological Analysis” by Ranjay Vardhan[11] explores elder abuse in India, zeroing in on aspects like gender, money dependence, and family ties. The study reveals that elders with limited finances, especially those living with family, face higher risks of different types of abuse. This abuse can be physical, emotional, or involve taking their money unfairly. Many elders don't report the abuse because they're worried about how it will make the family look or fear more harm. The study emphasizes the urgent need for stricter laws to deal with issues like elder abuse because the existing law, the MWPSC Act, 2007, often falls short and isn't effective enough. It supports the idea for criminalization of elder abuse as a prevention and offer real protection to older persons.

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[10] Nagpal, S. (2024), Legal framework for the aged: Progress and pitfalls in India's elderly welfare policies, IJFMR.

[11] Vardhan, R. (2017). Elder abuse and elder victimization: A sociological analysis. International Annals of Criminology, 55, 99–113.

The article "Prevalence and Identification of Elder Abuse in India: Current Scenario and Way Forward" by Vidushi et al, (2020)[12] studies elder abuse in India. It studies the scope of elder abuse, the problems associated with identifying it, and the possible changes needed in the system. The authors point out that elder abuse is a multifaceted problem and it is rarely reported. This is problematic because of cultural practices as well as the emotional bonds between the victims and the abusers which are usually family members. The study emphasizes the responsibility of health care professionals to reported cases to detect abuse although this is difficult considering the nature of the healthcare system in India. To counter this situation, the authors propose the use of EASI (Elder Abuse Suspicion Index) and VASS (Vulnerability to Abuse Screening Scale) and discuss how these tools may be useful in India. To conclude, the article raises the need for more education and awareness and emphasizes that there are effective screening techniques that would be useful in identifying and preventing elder abuse in India.

The study, "Elder Maltreatment in India: Examining the Senior Citizens Act of 2007 and Its Implementation," by Farida Ejaz[13] explores the impact of MWPSC Act, 2007. It attempts to evaluate the extent to which this law provides protection from elderly abuse in India. The research highlights a number of gaps in implementation of the law. First, a large percentage of older adults are unaware of their legal entitlements. Second, there are insufficient safeguards within the system to ensure compliance. Finally, there are sociocultural factors that inhibit reporting such cases of abuse. Ejaz argues that the Act is more focused on civil measures and does little to prevent abuse with strong criminal measures. This supports the need for criminalization of elder abuse. The study proposes radical alterations to the existing framework of laws. These changes have to include the stipulation of elder abuse as an offense. It also calls for greater provisions on awareness of the law and mechanisms of enforcement to enhance the protection of the elderly.

The study “Domestic Violence against Elderly People: A Case Study of India” by Punita Govil and Swati Gupta[14] examines domestic violence against older individuals. It states different forms of violence and abuse including verbal, emotional, and physical. The research emphasizes the tremendous suffering of the elderly with many of these cases not being

[12] *Vidushi M. et al., Prevalence and Identification of Elder Abuse in India: Current Scenario and Way Forward, 16(1) J. Indian Acad. Geriatr. 25, 25–30 (2020).*
[13] Farida K. Ejaz, *Elder Maltreatment in India: Examining the Senior Citizens Act of 2007 and Its Implementation*, 30 J. Elder Abuse & Neglect 289 (2018).
[14] *Punita Govil and Swati Gupta, Domestic Violence Against Elderly People: A Case Study of India, ResearchGate (2016)*

reported. This non reporting is largely due to social stigma, dependency on the perpetrator, or sometimes lack of awareness about the legal processes involved. According to the authors, existing MWPSC Act, 2007 and similar policies are too lenient and do not adequately address the issue of elder abuse. They have recommended harsher statutes claiming that there will be better protection for old citizens if abuse targeted at the elderly is classified as a crime. The study underscores more legal reforms along with appropriate levels of social mobilization needed to effectively deal with elder abuse in India.

In the article "An Insight into Elder Abuse," by Labdhi Jain[15] analyzes the growing problem of elder abuse in India. Elder abuse can take numerous forms like physical injuries, emotional trauma, exploiting finances, or neglecting them. Unfortunately, due to social stigma, many forms of elder abuse go unreported. This is further exacerbated by the fact that victims are often dependent on their abusers, who tend to be family members. Jain emphasizes that although laws like the MWPSC Act, 2007 are in place, these do little to negative elder abuse. The article pleads for more legal action and argues that elder abuse should be a criminal offense in order to protect the elderly in India.

1.8. Research Gap

In India, Different laws and schemes have been implemented for welfare of elder persons. These include the MWPSC Act, 2007 and various policy, schemes and programs from the Ministry of Social Justice and Empowerment. The main goal of these framework is to provide financial support to the elder persons and ensure that their families are responsible for their care. These laws mainly focus on solving property issues or ensuring that older people have enough money to live on. However, the abuse of older persons in India at present is more than just about financial problems. It now includes emotional, psychological, physical, and institutional abuse, especially in home and caregiving situations. Since the COVID-19 pandemic, these types of elder abuse have increased. Yet, the existing laws are mostly concerned with financial welfare and do not address or punish the other forms of abuse adequately. Therefore, when older persons face non-financial abuse, the current legal system does not offer enough help or protection in such cases. This highlights the urgent need for new

[15] *Labdhi Jain, An Insight into Elder Abuse, Int'l J. Innovative Res. in L. (Sept. 2022)*

and better laws that are able to combat all forms of elder abuse, potentially including criminal penalties for those responsible for cause of such elder abuse.

1.9. Framework of Study

This dissertation has been divided into five chapters, each chapter dealing with a different aspect of elder abuse and its legal framework in India.

Chapter 1: Introduction

This chapter provides the foundation for the research by outlining how elder abuse is a growing social and legal challenge in contemporary India. It describes the research problem, objectives, hypothesis, research methodology, literature review and research gap which this dissertation aims to address.

Chapter 2: Understanding the Concept of Elder Abuse

This introductory chapter outlines basic understanding of elder abuse by defining what elder abuse is, how many types of elder abuse there are, and theories related to elder abuse. It explores the mental, social and cultural dynamics of abuse. It also looks at what causes elder abuse, including ageism, older people's dependence on others, and social isolation and family dynamics that can contribute to mistreatment of elders.

Chapter 3: Legal Framework for Elder Abuse in India

This chapter carefully reviews the laws in India that are designed to protect older individuals. It explores the rules and laws currently in place, the Indian Constitution, the court's interpretations, and the programs aimed at assisting the elderly. The chapter highlights that these legal responses are disorganized and insufficient for effectively addressing elder abuse in the country.

Chapter 4: Comparative Legal Frameworks for Elder Abuse

This chapter provides a thorough comparison of elder abuse laws in countries such as the United States, Canada, Australia, the United Kingdom, and Germany. It examines the most effective practices in these regions and identifies valuable lessons that could be applied to improve the situation in India regarding elder abuse.

Chapter 5: A Case for Criminalization of Elder Abuse in India

This final chapter explores the necessity for elder abuse to be a distinct crime in India. It makes a case for a special legislation or modification to current legislations to effectively address this problem. The chapter proposes significant components that an elder abuse law must contain. The chapter also discusses potential issues and challenges that could arise when attempting to implement the law. The chapter ends with a summary of conclusions and suggestions for reform.

1.10. Limitations of the Study

This study uses a doctrinal research method. It focuses on examining legal texts, laws, court rulings, and expert articles. Due to time constraints, the study did not include real-world data collection methods like stakeholder interviews or case studies. These could have provided deeper insights into the effects of elder abuse in India. The doctrinal approach offers solid legal analysis but may not fully reflect the experiences of elder abuse victims or the opinions of law enforcement and social workers handling these cases. Also, the study is limited to current legal frameworks and literature, which restricts the exploration of new or changing legal practices that might impact how elder abuse is addressed as a crime in India.

CHAPTER 2: UNDERSTANDING THE CONCEPT OF ELDER ABUSE

2.1. Introduction

Across the world, concerns around elder abuse are on the rise, especially in countries like India where the population of the elderly, those aged 60 and above, is growing[16]. Elder abuse refers to any act that causes harm or distress to older persons, mostly at the hands of people they trust or depend on. It can take many forms such as physical abuse, which results in bodily injury; emotional abuse, which undermines their mental and emotional well-being; and financial exploitation, where someone misuses an elder's money or assets. Sexual abuse of elders, though less talked about, is equally serious. Neglect is another common form of elder abuse, where caregivers fail to provide the basic care and support the needs of elders. Often, these forms of abuse overlap, making the experience even more damaging[17] Understanding the phenomenon requires a nuanced exploration of its definitions, theoretical underpinnings, and contributing factors.

Ageism plays a major role in fuelling elder abuse. At its core, ageism is discrimination based on age, and it often shows up as negative stereotypes or prejudices against older adults. These harmful attitudes of seeing seniors as weak, incapable, or a burden can quietly shape how society treats them, making abuse more likely to happen and less likely to be noticed or addressed.[18]

2.2. Defining Elder Abuse:

Elder abuse has not been defined under the current Indian statutory law, and there is not a singular definition which is universally accepted of the term. However, both international organizations and Indian policy documents offer working definitions that help contextualize and address the issue from legal and social perspectives.

The World Health Organization (WHO) describes elder abuse as:

[16] *HelpAge India,* State of Elderly in India 2023*, at [pages 2-5] (2023)*
[17] *WHO, The Toronto Declaration on the Global Prevention of Elder Abuse (2002).*
[18] *Liat Ayalon and Clemens Tesch-Römer,* Contemporary Perspectives on Ageism *(Springer 2018)*

A single or repeated set of actions or any lack of necessary action which cause harm to an older person and where such harm is caused within any relationship where there is "an expectation of trust"[19]

This definition is widely referenced when the conversation is about global health and questions about human rights across the globe, it emphasizes that the breach of trust is common phenomenon in most cases of elder abuse whether it is physical abuse, emotional abuse, financial exploitation, or in cases of neglect by others.

In India, although no specific legal definition exists in criminal statutes, the Ministry of Social Justice and Empowerment in its national report has described elder abuse as:

"A violation of human rights" which causes illness, lack of productivity, isolation and despair among the elders. Elder abuse includes violence of physical nature, denial of financial support, emotional abuse, and neglect.[20]

BNS criminalizes different types of abuse like physical assault, financial exploitation and intimidation but it does not define or address "elder abuse" as a distinct category of offense.[21] Similarly, the MWPSC Act addresses neglect and financial exploitation of the elderly, but focuses primarily on maintenance and property matters.[22] The absence of an elder abuse definition which is codified and comprehensive in Indian law has led to inconsistent protection of the elderly and limited enforcement of the present laws.

While courts have not explicitly defined elder abuse, several important judgments have contributed to a legal understanding of elder abuse in India. Some of which are as below:

In *Justice Shanti Sarup Dewan, Chief Justice (Retd.) v. Union Territory, Chandigarh*,[23] the court have addressed the rights of the elderly to reclaim their property from their children. In this case, Justice Dewan and his wife, the legal owner of a house in the city of Chandigarh, sought the eviction of their son and daughter-in-law due to alleged harassment, who were residing with them in the same house. The HC ruled in favour of the elderly couple, emphasizing that under the MWPSC Act, elderly persons have the right to live peacefully and are able to evict their children from their property if they are being mistreated by their children.

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[19] *World Health Organization,* Elder Abuse *(2022).*
[20] *Ministry of Social Justice and Empowerment, Govt. of India,* Report on Elder Abuse in India *(2016),*
[21] *Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 76 (criminal force), 83 (assault), 124 (criminal intimidation), 316–318 (criminal breach of trust), India Code (2023).*
[22] *MWPSC Act, No. 56 of 2007, §§ 4, 23, India Code (2007).*
[23] *2016, 6 SLR 321 (P and H, HC).*

The court held that the children were mere licensees in the property, and that such a license could be revoked by the parents at any time.

In *S. Vanitha v. Deputy Commissioner, Bengaluru Urban District*,[24] SC dealt with a conflict between the rights of a daughter-in-law under PWDV Act and the rights of elderly under MWPSC Act. The Court emphasized that both laws serve different purposes and should be interpreted in a way that allows both of them to function together.

Additionally, in *Shweta Shetty v. State of Maharashtra and Ors*, the Bombay HC condemned the misuse of the MWPSC Act for illicit property acquisition, underlining that such actions amount to fraud.[25]

In another recent case, *Krishna Kumar v. District Magistrate, Sultanpur*,[26] the Allahabad High Court clarified that while the MWPSC Act is meant to ensure elder welfare, it does not automatically authorize eviction without proper legal basis.

These decisions highlight the court's willingness to interpret existing laws and provisions to provide more comprehensive protection against elder abuse, particularly where such protections have not been explicitly codified.

2.3. Kinds of Elder Abuse

Elder abuse is able to take different shapes, and it's important to understand the different ways it can show up in the lives of older individuals. While these categories are often interconnected, experts and organizations such as the WHO generally recognize five kinds of elder abuse:[27]

1. Physical Abuse: Such type of abuse refers to any usage of physical force that inflicts pain, injury, or discomfort to an elder. It could be in form of hitting, slapping, pushing, or using restraints improperly. These acts may leave visible injuries, but sometimes the harm is hidden or goes unreported out of fear or shame.

2. Sexual Abuse: This involves any unwanted or forced sexual activity with an elder. It might be behaviour directed at an elder, including unwanted touching, assault, or coercion into sexual

[24] *2020, 14 SCC 232.*
[25] *2023 SCC OnLine Bom 897.*
[26] *2023 SCC OnLine All 1634.*
[27] *World Health Organization,* Elder Abuse *(2022); Ministry of Soc. Just. And Empowerment, Gov't of India,* Report on Elder Abuse in India *(2016),*

acts. Due to stigma and fear of not being believed, many older adults may never report such abuse.

3. Psychological or Emotional Abuse: This type of abuse affects the elder's mental well-being. Behaviours such as yelling, throwing insults, humiliating, or isolating the elder from friends and family are included in such kind of abuse. Over time, emotional abuse can cause depression, anxiety, and loss of self-worth.

4. Financial Exploitation: This occurs when someone improperly uses any property, money or any assets of an elder person for personal gain. It might involve theft, fraud, misuse of power of attorney, and/or coercion into signing documents.

5. Neglect: This happens when a caregiver does not meet required care, including food, medical treatment, shelter, or hygiene. It could be intentional neglect or it could be due to lack of awareness or resources which can lead to neglect. Self-neglect (when the elder fails to take care for themselves) is also an issue, though Indian law does not have any provisions to recognize such neglect.

Elder Abuse does not usually happen only once, it has a chance of reoccurring as it is a continuous pattern of behaviour. Elder abuse can take place in many settings such as: an older person's own home, a caretaker's home or any institution where elder frequent to. As India has no particular definition of Elder Abuse, it is difficult to track such abuse or compile data on such abuse therefore making it even more difficult for the law makers to formulate plans to protect elders from such abuse.

2.4. Major Theories Behind Elder Abuse

Numerous scholars have tried to understand the causes behind the elder abuse and have proposed theories each with their own unique insights on why is elder abuse so prominent:

1. Caregiver Stress Theory:

Caregiver stress theory is also known as the Situational theory, theorize that abuse takes place from stress and burden placed upon caregivers.[28] When caregivers have to manage elders with chronic conditions or have to take care of elder who are suffering from cognitive decline

[28] *Shelly L. Jackson and Thomas L. Hafemeister, Understanding Elder Abuse: New Directions for Developing Theories of Elder Abuse Occurrence, 21 Violence Against Women 896 (2016).*

without any adequate support, the risk of neglect or mistreatment increases by the caregiver towards the elder. This dependency dynamic further increases the elder's vulnerability.[29]

In the India, this theory is can be particularly seen in joint family settings where caregiving responsibilities often fall on one or two members of such joint family without any external support. Cultural expectations of filial duty together with a lack of external support like state-provided eldercare, may lead to caregiver fatigue and in turn leads to abuse towards elders.[30]

2. Ecological Theory:

Ecological theory explains elder abuse through multiple layers of influence, it could be: individual, relationship, community, and/or societal.[31] On an individual level, elder abuse can happen due to an elder's physical or mental health challenges or a caregiver's stress or illness, which in turn might increase mistreatment of an elder. In close relationships, conflicts or financial and/or emotional dependence can create tension which can leads to abuse. At the community level, if there's limited access to eldercare like support services, healthcare, or safe housing, it becomes tougher to prevent or report such abuse. On a broader scale, societal attitudes like ageism or the cultural belief that elders must always stay within the family can sometimes excuse or hide abusive situations.[32]

In India, deeply rooted caste hierarchies, the tendency to keep family issues private, and the friction between traditional values and modern lifestyles all weave together to create a complex social fabric. Economic gaps and the stark contrast between cities and villages further determine who can access support or seek justice when needed. Although laws such as MWPSC Act are meant to protect elders, many older adults aren't aware of their rights, and enforcement is often weak.[33] Social stigma around placing elders in care homes, along with a lack of accessible services, can leave them vulnerable.[34] Ecological theory helps us understand that tackling elder abuse in India isn't just about laws, it's also about changing mindsets, strengthening communities, and supporting families.

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[29] *Singh et al., Burden of Caregiving and Risk of Elder Abuse in India: A Population-Based Study, 13 Gerontology and Geriatric Med. 210 (2015).*
[30] *HelpAge India, State of Elderly in India 2021 (2021).*
[31] *Indira Shankardass and S. Irudaya Rajan, Elder Abuse in India: Policy and Legal Framework, 9 Indian J. L. and Soc'y 45 (2018).*
[32] *Devaki Nambiar and Kriti Vikram,* Proposing a Bioecological Framework for Elder Abuse in India*, 56(18) Econ. And Pol. Wkly. 25 (2021).*
[33] *The MWPSC Act, No. 56 of 2007, INDIA CODE (2007)*
[34] *Debanjan Banerjee,* Elder Abuse: Ground Realities in India*, 13(2) Indian J. Gerontol. Soc. Work 123 (2019).*

3. Social Exchange Theory:

Social exchange theory explains elder abuse as a consequence of perceived cost-benefit imbalances within relationships. Abusers may exploit elders when the personal gain (e.g., financial or emotional control) outweighs risks or moral deterrents. This is particularly relevant in cases of financial or emotional exploitation within families.[35]

In India, where most of the elderly parents usually reside with their children due to cultural expectations or economic need, this theory helps explain how mistreatment can be disguised as family duty. For example, when adult children rely on their parents' pension or property, it can lead to manipulation or pressure. These situations are further complicated by patriarchal ideas of control and entitlement, making such exploitation seem normal or justified.[36]

4. Psychopathology of the Abuser Theory

Psychopathology of the abuser theory explains elder abuse as a result of the abuser's psychological issues such as mental illness, substance abuse, or unresolved trauma. It also helps spot those who could be at risk of harming someone else. However, it tends to focus on the individual and can sometimes ignore the broader social or cultural factors that allow abuse to happen or go unchecked.[37]

In the Indian context, this theory becomes especially relevant when considering the lack of mental health awareness and services. Caregivers often go untreated due to the stigma surrounding mental illness or the unavailability of affordable care. Substance abuse and ongoing cycles of domestic violence within families also results in higher risk of abuse of elders, making it a complex issue that goes beyond just individual behaviour.[38]

5. Feminist Theory

Feminist theory examines how systemic gender inequality contributes to elder abuse, especially against older women. It critiques the gendered nature of caregiving roles and emphasizes the need for structural change to empower marginalized elders.[39]

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[35] *Indira Shankardass and S. Irudaya Rajan, Elder Abuse in India: Policy and Legal Framework, 9 Indian J. L. and Soc'y 45 (2018).*
[36] *P. Rajalakshmi,* Understanding Elder Abuse in India: Contributing Factors and Policy Suggestions*, ResearchGate (2022).*
[37] *Shilpa Sharma*, *Definitions and Theories of Elder Abuse, Academia.edu (2021)*
[38] *P. Rajalakshmi, Understanding Elder Abuse in India: Contributing Factors and Policy Suggestions, ResearchGate (2022),*
[39] *Shalini Patel and Neha Mishra, Gendered Dimensions of Elder Abuse in India, 8 Socio-Legal Rev. 33 (2018).*

In India, older women are often doubly marginalized first by age and then by gender. Widows, in particular, face social exclusion and economic deprivation, making them susceptible to both neglect and active abuse.[40] Cultural taboos against discussing domestic matters further obscure the issue.[41]

2.5. Contributing Factors for Elder Abuse

Just one problem does not lead to elder abuse, it usually arises from a combination of personal, relationship and societal issues. In the Indian context, where family and cultural expectations are deeply rooted, these factors become even more layered. Understanding what contributes to elder abuse is essential if we want to create laws and policies that not only punish abuse, but also prevent it.

1. Caregiver Stress and Dependency

One of the most common causes of elder abuse involves stress among caregivers. As people age, many of them develop health problems or become physically or mentally dependent on others. This care is often provided by family members who may not be trained or supported. Over time, this stress can turn into resentment, neglect, or even active abuse.[42]

The MWPSC Act, sought to tackle this imbalance by making it a legal obligation that children and heirs must support their elder parents.[43] However, in practice, caregiving responsibilities still fall heavily on family members without much state support.

2. Social Isolation

Another major factor is social isolation. Elderly individuals who live alone or are cut off from friends and relatives are far more vulnerable to abuse. With no one around to notice signs of mistreatment or neglect, the abuse often goes undetected.[44]

Sometimes, this isolation is even deliberate. Abusers are often family members who may limit the elder's interactions to keep control over them, especially when financial interests are involved.

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[40] *Reva Joshee and Swati Narayan, Widowhood and Its Associated Vulnerabilities in India: A Gendered Perspective, The India Forum (Sept. 1, 2023)*
[41] *Id.*
[42] *WHO, Elder Abuse, (2022).*
[43] *MWPSC Act, No. 56 of 2007, § 4, India Code (2007).*
[44] *Nat'l Ctr. on Elder Abuse, Understanding Elder Abuse (2020), https://ncea.acl.gov.*

3. Mental Illness and Cognitive Decline

Older persons with mental health issues such as dementia or Alzheimer's are at higher risk of being abused. They may forget what happened, be unable to report it, or not realize they're being mistreated.[45] Unfortunately, Indian law still doesn't fully address the specific risks faced by elders with cognitive impairments.

While the BNS (which replaced the IPC) have general provisions for assault, fraud, and criminal breach of trust, applying these laws can be difficult when the victim is unable to testify or recall events clearly.[46]

4. Financial Dependence and Exploitation

Financial abuse is considered one of the most prevalent forms of elder mistreatment, which is also the least visible in India. Many elders are financially dependent on their children, or vice versa. In some cases, children misuse their parents' pension or pressure them into transferring property.[47] Unfortunately, this kind of abuse often happens quietly within families and rarely reaches the legal system.

The MWPSC Act includes some important safeguards, like making coerced property transfers void,[48] and setting up Maintenance Tribunals where elders can seek financial support. Additionally, relevant BNS provisions can be used in cases of criminal breach of trust and cheating.[49]

5. Substance Abuse

Substance abuse either by the elder or the caregiver can worsen already difficult caregiving relationships. Caregivers under the influence may neglect or lash out at the elder. If the elder has addiction issues, they may face neglect, ridicule, or exploitation.[50]

Although there are no elder-specific provisions in Indian criminal law regarding substance-induced abuse, general provisions under the BNS apply.[51]

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[45] *XinQi Dong, Elder Abuse: Research, Practice, and Health Policy, 55 Gerontologist 153, 154–55 (2015).*
[46] *Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 76, 83, 85, India Code (2023).*
[47] *HelpAge India*, *Elder Abuse in India: Changing Cultural Norms*.
[48] *MWPSC Act § 23*
[49] *BNS §§ 316–318 (criminal breach of trust and cheating).*
[50] *Claudia Cooper et al., The Prevalence of Elder Abuse and Neglect: A Systematic Review, 37* Age and Ageing *151, 152–53 (2009).*
[51] *BNS §§ 83, 124 (criminal force and intimidation).*

6. Cultural Shifts and Ageism

Traditionally, Indian culture has placed a strong emphasis on respecting and caring for elders. But with rapid urbanization, migration, and the decline of joint families, this value system is breaking down. In many households today, elders are seen more as burdens than as respected figures.

This cultural shift has allowed ageist attitudes to creep in where elders are dismissed as irrelevant, dependent, or "in the way." These beliefs can silently normalize abusive behaviour.[52]

7. Lack of Legal Awareness and Access

Perhaps one of the most troubling factors is how many elderly people simply don't know that what they're experiencing is abuse or that they have legal rights. Some fear speaking up will lead to retaliation from family members. Others feel it's too late in life to fight back.[53]

While the MWPSC Act offers a helpful legal tool through Maintenance Tribunals, not many elders even know they exist. Access to legal aid and user-friendly procedures is still missing. Moreover, while the BNS includes criminal provisions for abuse, these laws only work if someone is willing and able to report the abuse and go through the legal process.[54]

2.6. Conclusion

Elder abuse isn't caused by one factor alone, it's the result of multiple and often overlapping issues. From overburdened caregivers and strained family dynamics to deeply rooted ageism in society, many conditions can make older adults vulnerable. These challenges are made worse when there are no strong legal mechanisms in place to protect them.

Theoretical frameworks help us understand the issue at a deeper level, but in practice, India still lacks a statutory definition of elder abuse, and no standalone criminal provision addresses it directly. As a result, many cases fall through the cracks unreported, unprosecuted, and unresolved.

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[52] *UN, World Report on Ageing and Health 48–49 (2015).*
[53] *Law Comm'n of India, 205th Report on the Need for Legislation to Regulate Assisted Reproductive Technology Clinics 68–70 (2008).*
[54] *MWPSC Act §§ 5–9.*

Addressing elder abuse requires more than awareness. It calls for legal reforms that specifically name and criminalize elder abuse, accessible enforcement mechanisms, and a societal shift in how we view aging and intergenerational responsibility.

CHAPTER 3: LEGAL FRAMEWORK FOR ELDER ABUSE IN INDIA

3.1. Introduction

While elder abuse is now being acknowledged more openly, India's legal system still doesn't fully reflect the seriousness of the issue. There's no single law that directly defines or criminalizes elder abuse in all its forms. Instead, the protection of older people is scattered across different constitutional provisions, welfare laws, and judicial interpretations. While the previous chapter explored the contributing factors and theoretical perspectives on elder abuse, this chapter assesses whether India's legal mechanisms are equipped to respond to those realities. This chapter explores the existing legal and policy measures aimed at protecting senior citizens and evaluates whether these are enough to meet the growing challenges of elder abuse in India.

3.2. Constitutional Protection

The Constitution of India doesn't specifically mention the rights of the elderly, but several articles may be interpreted to protect their welfare and dignity:

Article 21 guarantees the right to life and personal liberty. Over time, the courts have expanded its scope to include the right to live with dignity, access health care, and receive social security.[55]

Article 41, a DPSP, tells the State to render assistance in case of old age, sickness and disability.[56]

Article 46 encourages the State to protect vulnerable groups, including the elderly, from social injustice and exploitation.[57]

Although the DPSP are not enforceable in courts, they act as guiding values. When combined with Article 38, which calls on the State to promote social justice[58], these provisions highlight the government's moral obligation to support elderly citizens.

[55] *Cont. of India. art. 21.*
[56] *Cont. of India. art. 41. Directive Principles of State Policy*
[57] *Cont. of India. art. 46.*
[58] *Cont. of India. art. 38.*

3.3. Statutory Protection

India has several laws that provide financial, emotional, and legal support for older people. Though these laws may not specifically mention "elder abuse," they are aimed at making sure that older adults are treated with compassion and dignity.

1. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

This is the most comprehensive legislation to protect the needs of elderly people in India. Before 2007, there was no independent or distinct legislation that dealt only with the elder population. It enables parents and senior citizens to seek maintenance from their son or daughter-in-law or legal heirs.

Section 2(b) defines "maintenance" to encompass the provision of food, clothing, residence, and medical care. Although the Act does not explicitly define "elder abuse," the absence of such basic necessities provided can be interpreted as a form of neglect.[59] In particular, such neglect may be actionable under Sections 4 and 23 of the Act.

Section 4 imposes a statutory obligation on children or heirs to sustain their parents and senior relatives.

Section 5 gives elders the right to apply for maintenance through a tribunal, which must resolve the case within 90 days. Although Section 5(4) of the Act states that maintenance applications should be decided within 90 days, this timeline is rarely followed in practice. Research by the Law Commission of India[60] and organizations like HelpAge India[61] shows that many elderly applicants face long delays due to issues like lack of awareness, limited access to legal help, and overburdened or under-resourced tribunals.

In *Harvinder Kaur Bawa v. The Appellate Tribunal, Panchkula and Ors*., the Punjab and Haryana High Court discussed procedural aspects related to the Act, highlighting the necessity for timely resolution of applications. The court emphasized that the Tribunal is expected to follow a summary procedure to ensure expeditious disposal of cases, as mandated by the Act.

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[59] *Law Comm'n of India, Consultation Paper on Reform of Family Law 90–91, Report No. 278 (Aug. 2017). Ministry of Social Justice and Empowerment, Training Manual for Maintenance Tribunal Members under the MWPSC Act, 2007, at 10–12 (Gov't of India 2018).*

[60] *Law Comm'n of India,* Consultation Paper on Reform of Family Law *90–91, Report No. 278 (Aug. 2017)*

[61] *HelpAge India,* Elder Abuse in India: Role of Family and Institutions *(2022),*

However, the judgment also acknowledged that, in practice, delays occur, often due to procedural complexities and infrastructural limitations.[62]

Section 19 lays down that all the States is to establish one old age home in every district.

Section 23 protects elders from being deceived into giving away their property. If a transfer was made on the promise of care and the care is not provided, the property can be reclaimed.

2. Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

The BNSS is a recent law that modernizes India's criminal procedure. Section 125 of the CrPC which is now outlined under Section 144 of BNSS provides maintenance to parents and wife which indirectly covers interim maintenance of elder parents, thereby ensuring economic security of the elders. To establish entitlement to maintenance under this law, it must be demonstrated that the parents have been neglected by their children and they lack sufficient means of income for self-maintenance.

3. The Pensions Act, 1871

This Act provides for regular pension payments for retired government employees. It gives financial independence to many senior citizens.

In *Ashwani Kumar v. Union of India*, the SC laid down directions stating that the government should ensure timely pension payments and the delivery of essential goods to older people during the COVID-19 pandemic.[63]

4. Hindu Adoption and Maintenance Act, 1956

This Act emphasizes the duty of children to care for their aging parents. Under Section 20, it clearly states that both sons and daughters are legally responsible for the maintenance and support of their elderly parents. Such statutory provision reflects an evolving norm of gender equality in caregiving responsibilities.

In *Dr. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*, the Supreme Court decided that daughters are equally responsbile for the care of their parents, upholding gender equality in caregiving.[64]

[62] *CWP No. 17482 of 2015 (P and H, HC).*
[63] *(2020) 13 S.C.C. 585.*
[64] *1987, 2 S.C.C. 278,*

5. Muslim Personal Law

Muslim personal law also upholds the duty of children to maintain their parents. This responsibility is not contingent upon the parent's capacity to earn; even if parents are technically capable of working, children in a comfortable financial position are expected to support them. There is a special emphasis on the mother's welfare, with sons being obligated to maintain their mothers even when under financial strain themselves.

Such principles are well-entrenched within the foremost commentaries on Muslim law.

As Mulla explains: While children's parents might be able to earn themselves some money, children in fortunate situations are bound to provide for their poor parents. Even when it's hard, the son has to come home and support his mother, if she's poor and father, if he's not working.[65]

Similarly, Tyabji talks about Hanafi principles saying: Parents and grandparents in tough financial spots have the right to get support from their kids and grandkids who've got money even if they can take care of themselves.[66]

Shia law treats both parents the same when it comes to support, which is different from Hanafi views that put more weight on the mother's needs

6. Employees' Provident Fund and Miscellaneous Provisions Act, 1952

Under the EPF scheme, social security is provided by the government for workers who have dedicated most of their lives to the industry but have not been given any pension and gratuity arrangements. This Act has been one step forward to present welfare measures to the industrial worker's post-retirement days as well as in the event of an early death, for the benefit of his or her dependents. Provident Fund, as an old and dependant benefit, has indeed been effective. However, the accumulation of the Provident Fund is not enough to provide the family of the employee in case of an early death with the necessary and long-term security so a family Pension Scheme is there to ensure the same. The term family is used, no special gender restrictions are associated with it, men and women can equally contribute to and benefit from the scheme.

[65] *Mulla,* Principles of Mohammedan Law, ¶ *279 (22nd ed. 2016).*
[66] *Tyabji,* Muslim Law: The Personal Law of Muslims in India and Pakistan, ¶ *228 (4th ed. 1968)*

7. The Income Tax Act, 1961

This act puts senior citizens into two groups; one is called senior citizens (60 years and older) and the other is called very senior citizens (80 years and older).

Senior citizen or super senior citizen is eligible to higher tax exemption limits as compared to normal citizen. The basic income tax exemption limit for Senior Citizen is Rs. 300000/- and for and for Very Senior Citizen is Rs. 500000/-.

Under Section 16, a senior citizen who receives pension income from his ex-employer can get a deduction up to Rs. 50,000 out of that income. Other individuals are permitted to claim deductions of Rs. 25,000 under this act. However, it is important to note that the maximum deduction that can be availed in respect of the payment of health insurance premium for the senior citizens under Section 80D is Rs. 50,000.

It should be noted that the bill costs of a particular treatment of a senior citizen that are covered under section 80DDB is eligible for a deduction of up to Rs. 1 lakh (only if it is Rs. 40,000 for a general taxpayer)

An elderly person is liable for a deduction of only Rs. 50,000 under Section 80TTB for the interest income received on savings bank accounts, bank deposits, post office deposits, and cooperative bank deposits

8. Bharatiya Nyaya Sanhita, 2023

India still doesn’t have a dedicated law that clearly defines or criminalizes elder abuse. While some protections exist under civil laws and welfare schemes, criminal law doesn't yet fully address the specific harms older people face. In the absence of an elder-specific criminal statute, certain forms of abuse can be addressed under the BNS, which has replaced the IPC. Although these laws were not created with elder abuse in mind, they can still apply in many situations. For instance:

Section 130 (Assault) can be used when an elderly person is physically harmed. whether that’s hitting, slapping, or rough handling by a caregiver or family member.

Section 351 (Criminal Intimidation) may apply when elders are threatened, manipulated, or pressured, especially in cases where they’re forced to give up their property or kept silent through fear.

Section 316 (Criminal Breach of Trust) is relevant in situations where someone misuses an elder's money, pension, or property often a trusted family member or someone with legal authority like a power of attorney.

3.4. Government Initiatives for Elder Welfare

The Indian government other than providing legal protection to the elderly has also started various welfare schemes and policy-related activities through which they are helping to improve the life of the elderly and their welfare. These initiatives are aimed to rectify some of the issues and challenges which makes older people more vulnerable to abuse like poverty, loneliness, poor health, and a lack of support systems. Even though these initiatives aren't criminal laws, they still play an important role in preventing elder abuse and at the same time promotes dignity in aging as most of these initiatives aims to stop the causes of negligence and mistreatment of the older persons. Following are major initiatives taken by the government for elder welfare:

1. The National Policy for Older Persons (1999) was the first major initiative in India that laid the foundation for taking care of the elder persons. This policy made it the government's responsibility to help older people access basic needs like food, shelter, healthcare, and opportunities to stay active in society. This policy became the foundation for other welfare schemes that followed after.[67]

2. The Indira Gandhi National Old Age Pension Scheme (IGNOAPS) offers a small monthly pension to people aged 60 and above who live BPL. This financial assistance can help elders rely less on family members which reduces their risk of economic abuse or neglect by family members.[68]

3. The National Programme for Health Care of the Elderly (NPHCE) was set up so that every level of healthcare, from local clinics to hospitals, would be able to provide easy age-friendly healthcare to older people. This program educates doctors, nurses and

[67] *Press Information Bureau, Govt. of India, National Policy on Older Persons (1999)*, *PIB (Feb. 20, 2014)*
[68] *Ministry of Rural Development, Gov't of India, Indira Gandhi National Old Age Pension Scheme*

other healthcare staff to be sensitive and responsive to the unique needs of older patients in order to provide better care.[69]

4. Under the Integrated Programme for Senior Citizens (IPSrC) is a central government scheme with the objective of improving the daily lives of the elderly. This scheme aims to make sure that elder persons receive basic necessities on a daily basis such as shelter, food, healthcare, and even recreational and social opportunities. It also promotes active and meaningful ageing by supporting the efforts of NGOs, local bodies, panchayats, and communities who work for elders.[70]

5. The Atal Vayo Abhyuday Yojana (AVYAY) has brought together various programs focused on elder welfare, all under one umbrella, to enhance the quality of life for elders. This scheme collaborates with NGOs to offer essentials like food, shelter, healthcare, and opportunities for social interaction for older individuals. By ensuring that elders have access to safe environments and medical assistance, the program plays an important part in preventing neglect and abandonment of seniors in India.[71]

6. The Rashtriya Vayoshri Yojana (RVY) aims to provide elders from Below Poverty Line households (BPL) with free essentials like hearing aids, walking sticks, and spectacles. This improves physical independence of elders and reduces the burden on caregivers, which in turn lowers the risk of neglect of such elder persons.[72]

7. The Elder Line (14567) is a national helpline that older people can call if they're facing abuse, abandonment, or simply need help or someone to talk to. Available 24/7, the helpline connects callers to emotional support, legal guidance, and rescue services. This is one of the first programs in India to address elder abuse directly through an emergency response model.[73]

[69] *Ministry of Health and Family Welfare, GOI, National Programme for the Health Care of the Elderly (NPHCE), DGHS*
[70] *Ministry of Social Justice and Empowerment, GOI, Integrated Programme for Senior Citizens (IPSrC)*
[71] *Ministry of Social Justice and Empowerment, GOI, Atal Vayo Abhyuday Yojana (AVYAY)*
[72] *Ministry of Social Justice and Empowerment, GOI, Rashtriya Vayoshri Yojana (RVY),*
[73] *Ministry of Social Justice and Empowerment, Elder Line, National Helpline for Senior Citizens (14567)*

Altogether, these schemes reflect the government's growing recognition of the needs of older adults. However, many elders still don't know about these programs or struggle to access them due to regional disparities or lack of resources. For these initiatives to truly make a difference, they need to be better funded, more accessible, and closely integrated with legal protections. Only then can they provide a full safety net for India's aging population.

3.5. Support from Indian Judiciary

The Indian courts had a significant role in protecting the rights of older citizens, often stepping in when legislation falls short or is poorly enforced. Some key judgments include:

Dr. Vijaya Manohar Arbat v. Kashirao Rajaram Sawai[74]: The SC changed how Section 125 of the CrPC, 1973, is understood. Now, both sons and daughters, regardless of whether they are married, have a duty to care for their elderly and dependent parents. This came after an elderly father, Kashirao Rajaram Sawai, asked for support from his married daughter, Dr. Vijaya, who is financially independent. She argued that only sons traditionally supported parents and that married daughters were not obligated under Section 125. But the Court disagreed, stating that the law aims to help prevent poverty and homelessness among those who depend on others, like elderly parents. Furthermore, the Court clarified that "parent" also refers to stepmothers who are widowed and financially in need. This change promotes gender equality, making both sons and daughters responsible for their parents, and it also provides protection to elder figures like stepmothers. The judgment highlights that caring for one's parents is a legal obligation and that neglecting them might lead to serious legal actions, including criminal charges.

Kirtikant D. Vadodaria v. State of Gujarat[75]: The Supreme Court of India has made an important ruling regarding maintenance laws. It decided that aging parents have the right to seek financial support from their daughters, just as they do from their sons. This is a step toward eliminating the outdated belief that only sons are responsible for caring for their parents. The case in question dealt with a situation where a stepmother wanted financial assistance from her stepson, as outlined in Section 125 of the CrPC, 1973. The Court ruled that a stepmother can claim such assistance only if she is a widow and does not have her own children. Despite this specific ruling, the Court emphasized that both sons and daughters share the legal responsibility to support their biological parents equally. The Court also explained the purpose of Section

[74] *(1987) 2 SCC 278*
[75] *(1996) 4 SCC 479*

125 CrPC, which aims to prevent people, who rely on others from falling into poverty. This law is designed to provide financial support and is not limited by traditional gender roles. The decision is connected to a previous important case, Dr. Vijaya Manohar Arbat, reinforcing that daughters, including those who are married, have a legal and moral obligation to support their aging parents if they have the financial means. This ruling highlights the need for laws to evolve alongside societal changes. Failing to support elderly parents when children have the means to do so is taken seriously. The judgment suggests that if children deliberately neglect their parents, this issue might need to be addressed with stricter legal measures, potentially treating it as a criminal act.

Jharkhand Senior Citizen Advocates Service Sansthan and Another Vs. State of Jharkhand[76]: The Jharkhand HC discussed what the state must do under the MWPSC Act, 2007. People approached the court while filing this PIL to make sure that old age homes are set up in every district as required under Section 30 of the Act. The state told the court they created the "Jharkhand Maintenance of Parents and Senior Citizens Rules, 2013" and found land in Ranchi to build an old age home. The court ordered the state to quickly establish old age homes everywhere and to make healthcare access easier for elders by having separate lines at hospitals. This decision shows the court's role in making sure the state takes care of older people according to the law. It stresses the need for active efforts to protect senior rights and well-being. It underscores how important it is to turn legal intentions into real actions and suggests punishing those who neglect or abuse the elderly to maintain their dignity and care.

Sunny Paul v. State (NCT of Delhi)[77]: the Delhi High Court considered the question of whether a Maintenance Tribunal, as per the MWPSC Act, 2007, can direct the eviction of adult children from the property of an elder person in circumstances of abuse or neglect. The case occurred when aging parents brought a case for eviction of their sons, including Sunny Paul, from their self-acquired property on the grounds of mental and physical harassment. The Tribunal directed the eviction, which was questioned by the sons on the basis that the Act deals mainly with monetary maintenance and does not authorise the Tribunal to direct eviction. The decision of the Tribunal was upheld by the High Court, interpreting Sections 4 and 23 of the Act in a way that the Tribunal may pass orders declaring the transfer of property to be void if the transferee does not ensure basic amenities and physical necessities to the transferor. The Court

[76] *MANU/JH/0345/2016*
[77] *2017 SCC OnLine Del 7861*

highlighted that the purpose of the Act is to provide for the welfare and protection of elder persons, and a liberal construction that encompasses the right of peaceful residence in their own property. This ruling supports legal recourse available to safeguard elders from abuse and neglect.

Santosh Surendra Patil v. Surendra Narasgopnda Patil[78]: the Bombay High Court settled a serious dispute between elder parents and their sons over the occupation of property purchased by the parents independently. The parents alleged that their sons subjected them to physical and mental harassment as their sons failed to vacate the property. Relying on the MWPSC Act of 2007, the Maintenance Tribunal ordered the eviction of the sons, which was confirmed by the Additional Collector and was subsequently appealed by the senior son, Santosh Patil. Justice Sadhana S. Jadhav observed that it is the moral duty of children to care for their parents, which has been enacted under the Act. The Court reiterated that, under Section 23 of the Act, Maintenance Tribunals are empowered to pass orders of eviction in the interest of the physical and emotional well-being of elder persons. Further, the judgment highlighted the role of the State as a protector of the elderly, especially where support systems in the family are weak. The case demonstrates the judiciary's willingness to safeguard the rights of elder persons and underscores the importance of strong legal mechanisms designed to protect them from neglect and abuse.

Ashwani Kumar v. Union of India[79]: The Supreme Court of India ruled in a public interest litigation involving the rights and welfare of senior citizens under Article 21 of the Constitution. Petitioner Dr. Ashwini Kumar, ex-Union Law Minister, sought the intervention of the Court to ensure the effective enforcement of the MWPSC Act, 2007. The Court noted the insufficiency of existing pension schemes, citing that such disbursements which were as low as ₹200 per month were insufficient for living a life of dignity for an elder person. It reaffirmed the State's obligation to disburse adequate pensions, good quality housing facilities, and geriatric health care services. The Court further directed the Union and State governments to take proactive measures to fulfil their statutory responsibilities towards elder persons, especially during the COVID-19 pandemic, which had further increased the vulnerabilities of the elderly. This judgment marks the significance of the judiciary in reaffirming the State's

[78] *MANU/MH/1238/2017*
[79] *(2020) 13 SCC 585*

pledge to protect the rights of the elders and highlighting the significance of effective legal frameworks in preventing the abuse and neglect of older persons.

Smt. Shobha v. State of Karnataka[80]: the Karnataka High Court dealt with the rights of elderly citizens under the MWPSC Act, 2007. The petitioner, a 75-year-old widow, went to the Court requesting legal action against her sons, who allegedly were ill-treating her and refusing to vacate her property, which she had acquired herself. The Court highlighted the fact that the MWPSC Act is social welfare legislation meant to preserve the dignity and welfare of the elderly. It held that the Maintenance Tribunal has jurisdiction to direct the eviction of children from the premises of elder persons, if those children are abusive or neglectful of their parents. The judgment reiterated the role of the State in protecting the rights of elderly persons and ensuring their protection against instances of abuse and neglect.

3.6. Gaps and Inconsistencies in India's Legal Framework Addressing Elder Abuse

Although India has introduced various legal provisions and welfare schemes to support the elderly, the overall response to elder abuse remains fragmented and inconsistent. There is no single, comprehensive law that defines elder abuse or addresses it holistically. Instead, legal protections are dispersed across different statutes, each focusing on a narrow aspect of elder care viz a viz financial support, criminal offences, personal obligations, or welfare benefits without a cohesive framework to tie them together.

1. Absence of a Comprehensive Elder Abuse Laws

At this point in time, there is no one piece of law that explains and defines elder abuse and identifies it as a criminal act. The MWPSC Act, 2007 is mainly about financial maintenance and property disputes which do not include the emotional, psychological and physical abuses against the elderly. Similarly, the BNS, 2023, includes general offences such as assault, intimidation, and breach of trust, yet it lacks provisions that address the various concerns and vulnerabilities of elder abuse specifically.

[80] *2023 SCC OnLine Kar 3648*

2. Fragmentation Across Legal Domains

Current legal protections in India are scattered across civil, criminal, and personal law statutes, each addressing limited aspects of elder welfare. For instance, the MWPSC Act provides for maintenance, while personal laws like the Hindu Adoption and Maintenance Act, 1956 impose moral duties without strict enforcement mechanisms to follow through. Similarly, the provisions in the BNSS need to be interpreted broadly for there to be application to elder abuse, which also makes implementation uneven and mostly insufficient.

3. Unclear Jurisdictional Overlaps

Elder abuse mostly consists of a combination of financial exploitation, family conflicts, and/or neglect, yet there is no single authority or process to address such multi-dimensional issues. Due to a lack of singular authority to manage over cases of elder abuse, victims are often left to travel between police authorities, civil courts, and maintenance tribunals, each having limited jurisdiction and different capacities. Additionally, while the MWPSC Act mandates state tribunals, their availability and quality differ state-wise, especially in rural areas where the quality and availability of these tribunals are compromised.

4. Neglect of Non-Physical Forms of Abuse

India's legal framework often focus on older person's financial and physical abuse, but ignores other forms of abuse of older person, including verbal abuse, mental manipulation, emotional neglect, and social isolation. These minimal but dangerous forms of harm are neither well-defined nor adequately addressed in Indian law which leads to underreporting of such elder abuse and hence, in limited legal intervention. Institutional abuse within elder care homes and hospitals also remains largely unregulated.

5. Lack of Mandatory Reporting Mechanisms

There is no statutory requirement for professionals (medical practitioners, social workers, or care providers) to report suspected cases of elder abuse. This absence of mandatory reporting contributes to many incidents to underreporting, particularly among isolated or incapacitated individuals which eliminates the possibility of early intervention.

6. Inconsistent Implementation and Regional Disparities

While there are existing central schemes, polices and legal provisions, their implementation are usually very different from state to state in India. In some regions, elders have proper access

to amenities like helplines, shelter homes, and legal aid services whereas, in other states, these infrastructures are very poorly funded, inadequately staffed, or at most cases non-existent which results in uneven protection of elders across India.

7. Limited Awareness and Accessibility

Even when there are legal remedies available, many older persons do not know what their rights are or do not have the means to get help when they experience abuse. Factors such as illiteracy, dependence on family, fear of stigma or retaliation from the caregivers, and the complexity of legal procedures makes it tougher for them to seek help. Moreover, there is a barely any elder-sensitive legal aid, community outreach, and translated informational materials for better understanding for elders.

3.7. Conclusion

The Indian government has made several attempts in order to meet the basic needs of older persons, but the current system is ineffective when it comes to addressing elder abuse. Elder protections are spread across different codified laws, and none of these scattered provisions for protection for elders provide a direct, enforceable framework for prevention and punishment of elder abuse. Since, Elder abuse has not been defined nor considered a separate criminal offense, it limits the scope of enforcement and weakens the deterrent effect of existing laws.

Moreover, practical challenges like the elder's lack of awareness about their own rights, under-resourced and over-burdened tribunals and courts, social stigma around elder abuse, and uneven implementation across states have further diminished the effectiveness of the existing framework. Due to a lack of a unified and specific legal framework, many elderly citizens continue to suffer in silence.

These limitations point to the urgent need for a unified, elder-centric legal framework, which includes proper definition of elder abuse and not only criminalizes serious forms of elder abuse but also integrates social support mechanisms to make justice truly accessible to senior citizens.

CHAPTER 4: COMPARATIVE LEGAL FRAMEWORKS FOR ELDER ABUSE

4.1 Introduction

Elder abuse is a universal problem that crosses borders, cultures, and economic statuses. It has emerged as a worldwide problem, with nations across the globe developing legal, policy, and institutional responses to safeguard their elders. Understanding that older adults have unique vulnerabilities ranging from physical weakness and social isolation to financial dependency and emotional abuse, most nations have progressed to define, identify, prevent, and criminalize elder abuse in their respective jurisdictions.

Internationally, governments have responded to the issue through a variety of legal measures, including elder abuse-specific legislation, mandatory reporting laws, regulation of institutions in care facilities, and coordinated social services tailored to the elderly. Australia, Canada, Germany, the United Kingdom, Japan, Sweden, and several U.S. states (California, Florida, and Missouri, to name a few) have all created comprehensive and often innovative systems that are great case studies in elder justice.

These global guidelines not only capture the legal definition of elder abuse as an independent offense but also a wider acknowledgment of elder rights as human rights. Across most of these countries, elder abuse law is supplemented by effective support structures ranging from specialist helplines to legal aid centres, safeguarding agencies, elder ombudsmen schemes, and care coordination networks. In a few jurisdictions, elder abuse is formally recognized as a public health matter, bringing legal protection together with health and welfare policy.

For India, whose legal reactions to elder abuse remain scattered and predominantly civil in nature, reflection on these international best practices presents a primary opportunity. Watching countries that have succeeded in institutionalizing elder protection through strong legislation and inter-sectoral coordination can assist in informing the development of a unified and criminally enforceable strategy. Furthermore, adopting international standards would not only strengthen national elder care systems but also align India with international human rights norms, particularly those articulated by institutions such as the United Nations and the World Health Organization.

This chapter deals with selected jurisdictions that have led the way in responding to elder abuse through policy and legislation. By an examination of these cross-national experiences, it attempts to draw out principal lessons and concrete ideas that can help the Indian legal system design a strong, rights-oriented, and preventive response to elder abuse.

4.2 Country Comparisons

4.2.1 Australia

Australia has adopted a forward-thinking approach towards elder abuse. In 2024, it launched the National Plan to End Abuse of Older Australians, which focuses on prevention of elder abuse through public education, community awareness, and accessible support services.[81] One of the key features of the Australian model is the mandatory reporting, where healthcare professionals and aged-care workers are legally required to report suspected abuse. This early detection allows abuses of elders to be flagged before they can escalate. Furthermore, Australia has established specialized elder abuse response units which offers legal aid, social support, and mediation, mostly working across different sectors.

4.2.2 Canada

Canada addresses elder abuse primarily through its Criminal Code, which criminalizes physical, psychological, and financial abuse[82]. Provinces such as Ontario have gone a step further by requiring doctors and social workers to report suspected abuse. Legal aid services like the Advocacy Centre for the Elderly provide targeted support and education to older adults. Canada's federal and provincial systems also work together to fund shelters, community care programs, and elder-focused outreach campaigns.

4.2.3 Germany

Germany relies on its Civil Code (BGB) and related laws such as the Patient Rights Act to protect elderly individuals[83]. Guardianship laws (Betreuung) allow courts to appoint legal representatives to make decisions for elders who can no longer do so themselves, especially in

[81] *Australian Government, National Plan to End Abuse of Older Australians 2024–2034*
[82] *Criminal Code, R.S.C. 1985, c. C-46 (Can.).*
[83] *Bürgerliches Gesetzbuch [BGB] [Civil Code], §§ 1896–1908 (Ger.), translated at https://www.gesetze-im-internet.de/englisch_bgb/.*

cases of dementia or cognitive decline. Germany also mandates regular inspections of elder care institutions to ensure quality and prevent institutional neglect. Social services play a significant role in overseeing elder welfare, and care homes are monitored for compliance with strict national standards.

4.2.4 United Kingdom

The UK follows a rights-based approach to elder protection through the Care Act 2014, where local authorities have a legal obligation to act if they suspect abuse or neglect.[84] Each region has Safeguarding Adults Boards (SABs) made up of representatives from police, healthcare, and social services who work together to investigate and intervene in abuse cases. The emphasis of such laws is on early intervention in cases of elder abuse, maintain the dignity of elders, and empowering the individual. The UK's approach towards elder abuse comprises both legal accountability and practical person-centred care.

4.2.5 United States - Missouri

In the U.S., different states have different laws regarding elder abuse, but many of the states have comprehensive frameworks. Missouri, for example, passed Senate Bill 694 in 2025, strengthening accountability in long-term care settings.[85] The law states that there is a provision for mandatory reporting from staff members of care facility where the elder frequents and imposes harsher penalties for neglect or exploitation of elders. Missouri's law also promotes training for care providers who take care of elders and to have a stricter background check for employees who are working with vulnerable adults.

4.2.6 United States - California

Although many states have elder abuse laws, California has made the most comprehensive elder abuse laws in America. Under California elder abuse law, elder abuse is defined to include inflicting physical injury or harm, neglect of the elder, financial abuse or exploitation, abandonment, or the emotional or psychological mistreatment of someone aged 65 or older. The law also protects dependent adult victims ages 18 to 64 who suffer from physical or mental disabilities. Serious actions are taken against offenders who commit an elder's emotional and

[84] *Care Act 2014, c. 23, § 42 (U.K.).*
[85] *Mo. S.B. 694, 102d Gen. Assemb., 2d Reg. Sess. (2025) (U.S.).*

psychological abuse, abusing or misusing an elder's financial accounts, isolating an elder from family or friends, and any actions that purposely interfere with an elder's access to their property. The punishments for elder abuse vary depending upon the severity of the abuse. Convictions for misdemeanour elder abuse could put someone in county jail for up to one year and subject them to a fine of $6,000. In cases of Felony elder abuse can result in two to four years in state prison.[86]

Comparatively, Indian law does not define elder abuse as a standalone offense. While provisions under the BNS, 2023, can be applied to a certain degree on different cases of harm, there is no integrated statute that includes financial exploitation, psychological abuse, or neglect in one legal framework. California's approach, particularly its recognition of emotional and mental abuse, could offer a model for more holistic legal recognition in India.

4.2.7 United States - Florida

Florida defines elder abuse as the intentional physical or psychological harm towards individuals aged 60 and above. It also includes aggravated neglect, abandonment, and exploitation, particularly financial. Florida's Department of Elder Affairs investigates abuse cases alongside local law enforcement. The punishments for elder abuse are very severe. A third-degree felony can be punished with a maximum of five years in prison. At the same time aggravated neglect is a second-degree felony potentially punishable by a maximum 15 years in prison. Financial exploitation involving more than $100,000 can be charged as a first-degree felony, with a sentence of up to 30 years[87].

Compared to India, Florida offers stronger criminal penalties and a more comprehensive definition of elder abuse. While the MWPSC Act, 2007 addresses maintenance, it does not explicitly cover psychological harm or aggravated neglect. Florida's integration of civil and criminal pathways for prosecution highlights the need for similar reform in the Indian context.

4.2.8 Japan and Sweden

Both Sweden and Japan place high emphasis on active aging as a central component of their elder care policies. Older persons in Japan are encouraged to stay active through volunteering,

[86] *CAL. PENAL CODE §§ 368–368.5 (West 2024)*
[87] *FLA. STAT. §§ 825.101–825.103 (2024)*

community service, and publicly sponsored wellness programs. Sweden also encourages lifelong learning and social engagement through concerted efforts at the community level. These efforts are not only designed to improve mental and physical health but also to prevent the isolation that often leads to abuse cases among elders.

India has yet to implement a structured active aging policy at the national level. While schemes such as the Atal Vayo Abhyuday Yojana (AVYAY) support welfare delivery, there is minimal focus on continued community participation, volunteerism, or employment among senior citizens. Learning from Japan and Sweden, India could reduce elder isolation and dependency through more inclusive, participatory aging policies.

4.3 Global Themes and India's Gaps: A Comparative Analysis

Looking at international best practices, various clear patterns emerge that reveal both the strengths of global elder care systems and the key gaps in India’s current legal and social approach. This section highlights major areas of difference and best lessons from countries like the U.S., Canada, Australia, Germany, Sweden, and Japan which can be adopted by India.

1. Comprehensive Healthcare Rights

In the U.S., seniors are covered under Medicare and Medicaid, providing wide-ranging healthcare access irrespective of income whereas in India, Ayushman Bharat scheme is limited to the economically disadvantaged (BPL), leaving many elder persons without necessary medical support.

2. Elder Abuse as a Criminal Offense

Many countries, such as Canada and parts of the U.S. have clearly defined elder abuse as a criminal offence. Abuse may include physical, financial, psychological, or emotional harm. Currently India lacks a unified definition of elder abuse making it difficult for consistent enforcement.

3. Mandatory Reporting and Early Intervention

Australia and some Canadian provinces, and states like Missouri and California mandate reporting of suspected elder abuse by professionals. Whereas, India does not have any such requirement, and cases often go unnoticed due to silence or stigma around elder abuse.

4. Guardianship for Cognitive Decline

Germany and Australia offer effective guardianship laws for elders who are mentally incapable whereas India's legal system lacks a clear, elderly-focused guardianship model, despite the growing prevalence of dementia and Alzheimer's and other mental disabilities among the elderly.

5. Social Inclusion and Active Aging

Many countries like Sweden and Japan promote active aging through different state-funded programs for lifelong learning, active community engagement, and volunteerism towards activities in society. India's approach largely centres on welfare schemes with limited opportunities for ongoing engagement of the elder persons.

6. Support Services and Institutional Infrastructure

Australia and the UK integrated elder care with community services, safeguarding boards, and legal aid whereas Indian systems rely heavily on familial obligations under the MWPSC Act, with state-level services like old-age homes being inconsistently implemented across different states of India.

4.4 Reform Takeaways for India

After studying about international best practices, some common themes and noticeable gaps stand out that are especially relevant to India's current elder care laws. These reforms offer a roadmap for strengthening the legal and policy scenario in India for elder abuse.

1. Clear Definitions and Criminal Recognition

In countries like Canada and the U.S., elder abuse is explicitly defined and has been criminalized. These definitions include not just physical abuse, but also emotional,

psychological, financial, and institutional mistreatment. Comparatively, India's current laws don't define elder abuse as a separate legal category, making it difficult to identify and address all forms of harm effectively. Hence, there should be an explicitly definition of elder abuse.

2. Mandatory Reporting Can Make a Difference

Mandatory reporting laws in places like Australia, some Canadian provinces, and U.S. states require doctors, nurses, and social workers to report suspected abuse. This helps catch early abuse and protect vulnerable elders. In India, there's no such obligation and hence such obligation should be a statutory obligation to protect elder persons from abuse.

3. Legal Guardianship for Cognitive Decline

Germany and Australia have legal systems that empowers the courts to appoint guardians for elderly people who can no longer manage their own affairs. This serves to safeguard their health, finances, and rights. In India, although provisions are made for children and the disabled, no provision is made for elders with conditions such as dementia or Alzheimer's. Therefore, such provisions are needed in order to safeguard vulnerable older persons.

4. Healthcare That Reaches Everyone

Schemes like Medicare and Medicaid in the United States grant all senior citizens access to healthcare, regardless of their income. India's Ayushman Bharat scheme does give coverage, but only to the poor, so many elders do not have access to cheap medical treatment. Therefore, it is a requirement for a central scheme or policy that grants medical treatment and other such facilities to all elders regardless of their income or social status.

5. Helping Seniors Stay Active and Connected

Japan and Sweden are two nations, where keeping older persons socially active and engaged is of utmost significance through community activities, learning activities, and volunteer activities that can be used to a great extent to prevent abuse and neglect. There are hardly any such programs in India. The majority of the elderly are lonely, particularly in cities and metropolitan cities, with very few means of staying active.

6. Balancing Family and Institutional Responsibility

Indian law put emphasize that families are the one who are responsible for taking care of their elders. While it might be culturally important, there is a possibility that it can lead to abuse or neglect if families are unwilling or unable to provide care. Comparatively, countries like the UK and Australia support elder welfare through public services, legal aid, and governmental oversight. India will benefit from a more balanced model that includes both family support and institutional safeguards without solely focusing on one.

These international best practices highlight the importance of combining criminal penalties with preventive care, social support, and a governance based on protection of elderly rights. India can learn from these reforms to create an elder-centric and effective approach to elder abuse one that doesn't just punish the wrongdoers, but also empowers and protects its aging population. The following chapter will be exploring whether criminalization of elder abuse is necessary, either through new legislation or strategic amendments to existing laws, while determining the best approach for India's next legal evolution.

CHAPTER 5: A CASE FOR CRIMINALIZATION OF ELDER ABUSE IN INDIA

5.1. Introduction

The issue of elder abuse in India, have been recognized in different policies and academic discourses in recent years yet it remains unmentioned in the legal framework of India. Various statutes across different Acts provide fragmented remedies for the elderly, primarily through civil or general criminal provisions. As of now, there is not a single legislation that defines, categorizes, or criminalizes elder abuse as a separate offence. This calls for a single comprehensive codified law for criminalization of elder abuse.

This chapter argues for the criminalization of elder abuse as a necessary legal reform and will focus on critically evaluating the merits and limitations of criminalization. The aim is to establish a legal response that acknowledges the unique nature of elder abuse, ensures accountability, and upholds the dignity and rights of elder persons in India.

5.2 Why Criminalization of Elder Abuse Is Necessary

A. Legal Gaps in the Current Framework

The existing Indian legal framework does not define "elder abuse" at all. The MWPSC Act offers limited civil remedies primarily in the cases of financial support and property restitution. The Bharatiya Nyaya Sanhita (BNS), 2023 provides general provisions such as assault, criminal breach of trust, and intimidation, but these provisions are not enough as they are neither elder-specific nor sensitive to the situations where elder abuse is more prominent to occur (Dependency and Trust).

Such gaps in the Indian legal framework results in a system that fails to acknowledge the unique forms and layers of harm that an older person faces. For example, psychological abuse can involve behaviours like continued verbal humiliation, threats, or isolation which is rarely punishable unless it escalates into physical violence which often is too late in most of the elder abuse cases. This absence of legal recognition renders most of the types of elder abuse invisible and unpunished.

B. The Issue of Invisibility and Underreporting

Elder abuse is often thought of as a hidden, private form of harm, as victims often rely on their abuser for financial or emotional support. In many instances the abuser may be a family member (e.g., their children, a caregiver, or spouse), which can make it more challenging for elders to report the abuse out fear of retaliation or abandonment. The cultural and social stigma of disclosing family conflict, coupled with shame or helplessness, adds to the challenges faced by older persons, ultimately resulting in the underreporting of the same abuse.

Criminalization can assist in unveiling this hidden violence by confirming its seriousness and providing a clear framework for redressal. When the law names an injustice, it not only provides a path to remedy but also encourages society to see and challenge the behaviour as unacceptable.

C. Elder-Specific Vulnerabilities and the Need for Tailored Protection

Aging is a natural part of life, older persons often face age-related vulnerabilities like frailty, cognitive decline, social isolation, or financial dependence which increase their risk of exploitation by others and reduce their ability to seek help. These conditions make it ethically and legally necessary for protections that go beyond generic criminal or civil provisions.

Recognising elder abuse as a standalone offense would allow for provisions that consider these vulnerabilities in determining the nature of the offense, the investigation process, and the appropriate penalties. Just as many single compressive laws have been made for protection of children from abuse (JJA 2015 and POCSO Act, 2012), women from domestic violence and sexual harassment at workplace (Protection of Women from Domestic Violence Act, 2005 and POSH Act, 2013) to account for power imbalances and relational dependence, elder abuse requires a similarly thoughtful, context-sensitive legal response.

D. International Best Practices and Lessons for India

Elder abuse is acknowledged across the globe as an increasing issue that is impacting many older adults. First World countries have already criminalized elder abuse in some form. For instance, Canada's Criminal Code explicitly includes elder abuse as a prosecutable offense, and several of U.S. states, such as California and Florida, have dedicated statutes addressing different forms of elder abuse including the physical, emotional, and financial abuse of older

adults. Australia's National Plan to End Abuse of Older Australians (2024-2034) which mandates that professionals report elder abuse and provides for coordinated legal and social responses.

These successful models of best practice demonstrate that where you combine criminalisation of elder abuse, with really effective support systems either social or enforcement based, that real change is possible. Legal recognition helps raise public awareness which makes people to actively report abuse, and helps institutions respond more effectively. India can adopt a law that fits best in its own social and cultural realities, while also maintaining international human rights standards.

5.5 Concerns About Criminalization of Elder Abuse and How to Combat Them

1. Misuse and Overreach

One of the serious concerns relating to criminalizing elder abuse is potential abuse of the law itself or abuse of authority, especially in the case of highly personal and usually multi-layered family conflicts. Cases involving elder abuse also tend to cross over into hotly contested topics like property rights, inheritance, or control over the family. These topics may already be laced with tension. In these cases, there is a real risk that the criminal laws would be applied unreasonably or wilfully invoked by one side, even by the elderly themselves or those caring for them to gain leverage, retaliate, or harass another family member. Wronged relatives can use the legal system to bring unfounded or fabricated charges, not only potentially to destroy reputations but also resulting in unjust criminal proceedings.

This is a real concern, though one not specific to elder abuse legislation; it is rather a more general issue that besets various branches of criminal law, such as domestic violence, dowry violence, and matrimonial disputes. The answer thus, does not reside in the non-criminalization of elder abuse but in enhancing procedural protections. Mechanisms such as mandatory preliminary inquiries, expeditious inquiries, judicial monitoring at the stage of cognizance, and penalization of false or frivolous complaints can serve as effective deterrents to abuse. Moreover, training of law enforcement and judicial officers in the peculiarities of elder abuse particularly, where situated in family contexts is imperative. While protection of the elderly

must always be the priority, it is no less essential to ensure that the law is not used as an instrument of personal vengeance, for this is the secret to its integrity and impartiality.

2. Family Harmony and Cultural Sensitivities

India is a country with its deep roots in family and traditions which gives rise to another concern i.e., criminalization of elder abuse may hamper familial relationships or discourage caregiving by family members. In a society, for instance, where caregiving is basically a private or familial matter, resorting to police or courts might be perceived as a violation of trust in the family. Certain older persons are mostly concerned that the prospect of legal consequences may discourage relatives from assuming caregiving responsibilities less directly, if they happen to feel overwhelmed or are lacking in support. But protecting elders from harm should come before maintaining family appearances. Just as legal intervention is a way to protect women from domestic violence, which is usually the last resort as in the case with domestic violence laws in India. The goal is not to punish caregiving itself, but to penalize abuse that occurs within caregiving relationships.

Cultural norms may also prevent such elder abuse laws from being effectively enforced. Many elders may not want to report abuse for shame, fear of family dissolution, or the belief that suffering in silence is more virtuous than involving outsiders. Even the best laws will not be able to provide real protection without a wider change in social attitudes and norms in India. Such shift of social attitude is needed to protect elders from harm.

3. Implementation Challenges

Passing the law to criminalize elder abuse is a step in the right direction; but it is only the first step towards a solution. The primary issue is in enforcing the law. India's judiciary is already at breaking point; courts are clogged with cases, cases drag on for years, and there is a grave shortage of trained personnel who can handle the increasingly complex issues that crop up regarding elder abuse. If there is an enactment of a new criminal offense without making the underlying system that enables it to be enforced any stronger, there is a risk of adding another strain to an already groaning system. Elder abuse cases are special in comparison to many others. They often involve relatives, and the victims who are old parents or relatives may be too scared, drained, or emotionally torn to report. Police officers or judges with no training in

such delicate cases may overlook signs of abuse or too readily reject a case. And so, the law, for all its noble intentions, may yet fail to safeguard those it is meant to safeguard.

But those are challenges, not excuses for inaction. They are reasons for acting with wisdom and with intelligence. Along with criminalization, there must be a system sensitive to the emotional and physical reality of older persons. That means educating police and judges to identify the indicators of elder abuse, creating simple and accessible legal processes, and linking elderly victims to social workers, health workers, and legal aid services who can guide them through the process. We need safe places for older persons to speak openly, and have clear consequences for those who exploit them. Criminalizing elder abuse sends a strong message that society will not stand idly by and allow its elders to be abused, but for that message to be real, it will have to be accompanied by compassion, resources, and actual, on-the-ground support services.

5.3 What Should Criminalization Include?

A law criminalizing elder abuse should begin with clearly defining what that abuse actually is. Without a solid legal definition, enforcement becomes difficult, and many forms of mistreatment continue to go unnoticed or unpunished. A workable statutory definition which is clear and inclusive might be:

"Elder abuse refers to any action or inaction by someone in a position of trust or authority that results in physical, emotional, psychological, sexual, or financial harm, or abuse or neglect to an older person."[88]

An effective law should properly reflect actual experiences of older persons and cover the different types of harm they may face. Some of the key forms of abuse that must be recognized and criminalized are as follow:

Physical abuse: encompasses hitting, slapping, shoving, or any physical force that causes pain, injury, or discomfort. This may also include misuse of medications or restraints.

[88] *Missing voices: Views of older persons on elder abuse*. *Geneva: WHO, 2002.*

Psychological and Emotional abuse: This is sometimes a little more hidden but no less destructive. Such abuse can be endless criticism, threats, humiliation, manipulation or cutting someone off from friends and family.

Financial exploitation: most common type of elder abuse in India, consists of the mis-appropriation of an elder person's money, property or resources either through deception, coercion, or restricting access to their resources.

Neglect: If caregivers do not meet basic needs for food, medical care, hygiene or shelter, it can constitute serious neglect even if they do so unintentionally.

Abandonment and institutional abuse: Some elderly people are completely abandoned, or put in unsafe or abusive conditions like unregulated care homes or hospitals.

The law should also take into account aggravating circumstances, such as abuse by a caregiver or legal guardian, well-established recidivism, or abuse of a person suffering from dementia or another cognitive disability. When it comes to circumstances like these, harsher degrees of punishment would be more appropriate given the added vulnerability and breach of trust involved.

Finally, an effective piece of legislation must not solely focus on punishment. The law must address emergency protective measures, including temporary restraining orders, placement in a safe environment, and resources for immediate services. These tools can be essential to the elder's safety for as long as it takes to go through the legal process.

5.4 Designing a Legal Framework for India

India may consider one of two routes: (i) enactment of a separate Elder Abuse (Prevention and Protection) Act, or (ii) amendment of existing laws to provide for elder specific provisions. Although the latter may be less difficult to institute at first, a standalone statute is ultimately better for consolidating definitions, offenses, penalties and support in one piece of legislation.

Reform should include the following key features:

i. Definition and Classification: clear definition/categorization covering physical, emotional, financial abuse and neglect.

ii. Criminal Penalties: Graded sanctions for various types of abuse, like imprisonment and fines, with scope for non-cognizable or bailable classification depending on severity.
iii. Mandatory Reporting: A legal obligation on doctors, nurses, social workers, and institutional caregivers to report suspected abuse.
iv. Fast-Track Tribunals or Courts: Mechanisms for time-bound resolution, especially in urgent or high-risk cases.
v. Integrated Support Services: Legal aid, counselling, medical care, and shelter, with coordination between police, social welfare departments, and NGOs.
vi. Linkages with Existing Schemes: Coordinating between schemes like Elder Line (14567), old-age homes, mobile healthcare, and AVYAY initiatives would make the elder abuse laws stronger in protecting older individuals from harm.

5.6 Conclusion: Legal Recognition and the Path Forward

This dissertation set out to examine the legal inadequacies surrounding elder abuse in India and to argue for the necessity of its criminalization. When talking about criminalization the focus is not only on the punishment, it is also about putting a name on the harm. When there is a criminal law against certain harms, the society recognizes it as something which is not to be tolerated. hence, when the law explicitly recognizes elder abuse as a criminal act, it sends a powerful message: that the suffering of older persons matters, and that society will not tolerate their mistreatment.

Despite the increasing visibility of elder abuse in social and policy discourses, the legal framework in India remains fragmented, reactive, and mostly inadequate in recognizing elder abuse as a specific, punishable offense.

Through conceptual definitions, some theoretical underpinnings, and contributing factors, elder abuse has shown that it is more than merely an interpersonal or domestic issue. It is a structural and systemic harm propelled by dependence, silence, and societal ageism. The MWPSC Act, 2007 and general provisions under the BNS, 2023, are in place, but the coverage is limited, focusing only on financial sustainment and not the other types of serious abuse that occur, like elder emotional, physical, and psychological abuse. Similarly, many welfare programs and policies set up by the Indian government offer some support to the elders yet, they fall short of addressing the seriousness and specificity of the abuse faced by many older Indians.

Compared to best international practices, some countries have developed more muscular legal measures against elder abuse involving comprehensive elder protection laws or integrated criminal, civil and welfare mechanisms. These models highlight the need for a clear, coordinated legal response that not only punishes elder abuse but also prevents it from occurring in the first place and provides access to resources for victims. Such models offer great pathway for India to make its's own reformative law for criminalization of elder abuse.

Accordingly, this dissertation argues that making elder abuse a criminal offense in India is not only legally appropriate but also morally essential. The law must define elder abuse as an own crime, which should include different forms of abuse whether its physical, emotional, financial, neglect, institutional abuse and abandonment. A specific legal framework would help fill the current gaps in protection, improve enforcement, and promote a culture of responsibility and respect toward older people.

Criminalization of elder abuse would clearly show that it's not just a personal or family issue, but a serious breach of human rights. It also aims to restore the integrity in aging. Just as India has created laws to protect women and children, it is time to show the same commitment to elder persons.

However, passing a law is not enough. To be effective, it must be implemented properly. This includes training police and judges to handle such cases of elder abuse sensitively, requiring professionals to report suspected abuse on elders, and connecting legal protections with existing welfare programs for protection of elders. It is also essential to address the social stigma and cultural barriers that often stop older people from speaking up or seeking help.

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